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SUBJECT Administrative Secrecy Agreement

HOSTESS: Tonight on Page 5 we'll take a look at the controversy over whether the Federal Government should or should not have the power to censor and institute lie-detector tests in an effort to stop leaks to the press. With us is John Greaney, Executive Director of the Association of Former Intelligence Officers, and Alan Adler, legislative counsel for the American Civil Liberties Union.

Welcome, both of you.

Mr. Greaney, if we could start with you. To some people, this system of censorship and polygraph testing conjures visions of George Orwell's 1984, if you will. What is the justification?

JOHN GREANEY: Well, I think we go back to the basic premise that the United States Government has classified material that is needed to be protected. And my experience was with the Central Intelligence Agency. And there, a specific statute, the National Security Act of 1947, specifically ordered the Director to be responsible to prevent intelligence sources and methods from unauthorized disclosure.

Now, that's the premise that this protection starts with. They instituted secrecy agreements whereby employees of the agency signed a contract agreeing to prior review of manuscripts before they were published. At the same time, they had a system of the use of polygraph for employees being considered for employment with the Central Intelligence Agency. Both of which, in my opinion, have worked very well to protect the classified material.

HOSTESS: Mr. Adler, do you agree with this?

ALAN ADLER: Our problem, basically, is that we think there's far too much information classified. And when it is classified, it's not always clear that there are genuine national security concerns involved in the classification process. All too often the experience has been, in the past, that information is classified, generally, because it's politically embarrassing to be disclosed to the public because it puts a particular Administration's actions or policies in a bad light.

And particularly this kind of policy, involving pre-publication review and censorship of former government officials, the people who have the most insight into the way policies are formulated and the way government actually works, would deprive the public of a tremendous source of information about their own government. And we think that the situation that the President cited in justification for this kind of a policy, which was largely his dissatisfaction with institutional leaks, is not really one that's addressed by this problem. Because, after all, institutional leaks occur while government employees are serving in their offices in the government. That certainly doesn't justify imposing lifetime censorship on them after they leave government.

HOSTESS: To both of you. Do you feel that a lie-detector test violates, basically, the rights of that employee, of that government employee?

GREANEY: I do not. I had several lie -- we would like to refer to them as polygraphs, because I think there's a difference, and it's not just semantic. On the theory that a polygraph is an instrument used as one means in investigation. It's a tool as part of the investigation. The Office of Security administers these. But that's the basis. It is not -- nobody that I've ever talked to about the instrument has tried to put forth that it is entirely correct in a hundred percent of the cases. It's merely used as an additional tool in the investigation.

It's unnerving to take one, yes. But it's necessary, and I think it's useful.

HOSTESS: Mr. Adler?

ADLER: We think part of the problem with this, particularly the expanded intended use of the polygraph test that seems to be contemplated by the President's directive -- up until now, the policy on using polygraphs, even in security investigations, has always been based upon the idea that the individual voluntarily subjects himself to the polygraph exam, and that an

individual's refusal to submit to a polygraph doesn't lead to any adverse consequences, either with respect to his employment or any possible subsequent criminal action that could be taken against him.

However, under this directive, that would change. In fact, individuals, in the context of leak investigations, would be required to submit to polygraph examinations. And if they refused, adverse administrative sanctions could, in fact, be levied against them. This could run the gamut of having individuals denied security clearances, which in the case of jobs, particularly, in the State Department or in the Defense Department would mean they couldn't perform their current jobs, and ultimately would have to be demoted. It would raise substantial questions about their future career advancement in this area, and in fact could ultimately lead to them having recorded in their files, as government employees, the fact that they are suspected of being risks in terms of security.

Beyond that, I think, because of the fact that the evidence about the reliability of polygraphs is really so vague and so contradictory at this point, I think it's fairly clear that they're not really useful for the purpose that the President seems to have in mind, in the context of leak investigation. Federal courts, for example, do not consider the results of a polygraph exam admissible as evidence in any kind of a prosecution. And, of course, since the President does in fact emphasize that disclosure of this kind of information is a violation of criminal law, ultimately that would seem to be where they would prefer to head in these kind of cases.

Beyond that, I think, the ACLU also clearly regards the use of polygraphs as a mechanism that raises substantial questions about self-incrimination and possible violations of Fifth Amendment due process rights as well.

GREANEY: If I could interrupt there just a minute.

HOSTESS: Go ahead.

GREANEY: That last statement about the Fifth Amendment. That is only applicable in a criminal prosecution, that you talk about raising the Fifth Amendment defense.

ADLER: That's true. In those terms, it is. But, of course, what -- since you are contemplating here administrative sanctions, in terms of the result of the conclusion that an individual in fact may have been the source of a leak, clearly you're asking an individual to incriminate himself with respect to that subsequent consequence.

GREANEY: But I think you have to agree that there are also different standards to be set for an administrative procedure as opposed to going through the indictment and the grand jury proceedings and everything else in a criminal. As you stay in the administrative cycle, you don't have the same criteria and guarantees as you would in a criminal prosecution.

ADLER: Well, that's true. And I think that that's all the more reason why the controversy about the utility of polygraph examinations in this raises real questions about whether its use should be expanded beyond what is currently permitted in the law.

GREANEY: But I would still argue that the question of not being able to introduce it as evidence in a criminal prosecution is not a substantial argument to deny its use in an investigation for a leak, because you're at a different level of intensity with regard to the administrative investigation versus a criminal prosecution.

ADLER: That's probably true if you consider that past policy has always been that the individual must voluntarily agree to submit to a polygraph. We are now talking about a situation where the individual does not have that choice. The individual is asked to submit to the polygraph exam, and informed that, in fact, his career will probably suffer in a fairly serious fashion if he refuses.

GREANEY: But what would you consider about the possibility of installing this on the same basis as the prior-publication review -- that is, on the basis of a contractual agreement? Would you have any objections that if the conditions to take a polygraph were incorporated into the secrecy agreement, which is then determined to be a contractual agreement?

ADLER: I think that raises additional questions about what a government employee should have to agree to submit to in order to become a government employee, in order to serve the public and to serve the government, particularly because you're addressing here individuals who are generally in senior policy positions, at least with respect to the lifetime censorship requirements under the President's directive. I think what you face here is a situation where you would actively discourage individuals from seeking government careers and from seeking to serve the public in government because you raise the ante each time you say that, individually, we would like to look a little bti more into your background, to get a little bit more assurance about your security clearance, and just to be certain that we know as much as we need to know about you. And I think that that is an adverse consequence that I don't think the President has adequately considered.

GREANEY: Well, I would argue, to support the President's position, that what we're attempting to do is to increase the quality of the government employee.

HOSTESS: Hold that right there, Mr. Greaney. We will come right back and continue this subject.

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HOSTESS: There is growing concern that the censorship of writings and speeches could shut the American public out.

With us is John Greaney, Executive Director of the Association of Former Intelligence Officers, and Alan Adler, legislative counsel for the American Civil Liberties Union.

Mr. Adler, I believe you touched on it in our last segment. With the censorship of speeches and writings, it will sacrifice, or will it sacrifice, an important element of free speech to the public, with this concern over national security?

Mr. Greaney to comment on that also.

ADLER: I think it sacrifices an important element of that, both for the individual government employees, who then leave the government but remain subject to this requirement even in their private lives thereafter, and also does deprive the public of a source of information.

For the individual employees, of course, they proceed to go into careers either pursuing law or in the media, possibly in the academic or business world, where, basically, they try to advance their careers based upon their experience in government. Someone who has served in the diplomatic corps, for example, or in the Defense Department hopes to be able to use that experience in securing profitable employment in the private sector. And if that individual is required to, for the rest of his working life, submit anything he writes which is based upon his experience in government, which is filtered through his experience in government, to a government agency for censorship, then he becomes of questionable value to the people who might otherwise want to utilize him based upon his experience.

Beyond that, of course, you then deprive the public of information, timely information, where current events require that the public be informed by government officials who have been inside the government, who understand the way policy is formulated, the way decisions are made.

To give you a good example, when the country learned, in fact, that the United States had invaded Grenada, immediately, in

the next day, virtually every major newspaper and magazine contained interviews or, in fact, op-ed pieces or articles from former government officials. And usually those government officials were people who had served in the State Department, the Defense Department, the intelligence community, or, in fact, in the White House in some capacity, because they are the ones who would have the most insightful comments to make on the impact such an action would have on American foreign policy and our standing in the world.

But, of course, if those individuals were subject to this kind of a requirement of censorship, as is contemplated in the directive, they would have to submit those articles to the agency for whom they had worked. It's very doubtful that the agency would be able to turn those articles around and provide them back for publication in time to satisfy the news media.

And beyond that, of course, it allows the government, then, to decide what that former government official can say on hte particular event, because they determine what is in fact classified information, that they would then reserve the right to delete from anything that is written.

HOSTESS: Mr. Greaney, are we depriving the public of vital information?

GREANEY: No, I don't think so. I think Mr. Adler's comment about the Grenadian rescue operation was that people that had been involved in government and had experience were not deprived from talking because they were not involved in the classified planning that went into the operation.

The thing I'd like to bring out at this point is to demonstrate how the Central Intelligence Agency has operated with their Publication Review Board which is based on the secrecy agreement and is not covered by this current directive. They have been going since 1977. They have completed -- there have been 974 submissions to this Publications Review Board, 700 of which were cleared without any deletions whatsoever. Sixteen were disapproved. And they have required and met the requirement to have this review done within the 30 days that was established by the Fourth Circuit Court of Appeals in the Marchetti case.

Now, the question of deadlines where additional pieces aer being submitted for publication on op-ed pages, as Alan mentioned, they do make adjustments to make those reviews very quickly.

Now, the question of what their review is for is not for the substance. It gets into the question of identifying classified information. That's the purpose of the review, is

to identify classified information. And I think experience and I think litigation has demonstrated it has been very fair on classified information.

ADLER: Let me say, John, that in citing those figures for the CIA, which is one agency and an agency that is known to be particularly secretive about its activities and repeatedly informs its employees that they are to be, even after they leave government, since 1977 -- we're talking about six years -- over almost a thousand, almost one thousand articles, books, manuscripts had to go through this progress.

Now, can you imagine, since the GAO has informed Congress that approximately some 130,000 individuals currently in government outside of the intelligence community would now be under this obligation, can you imagine what that would mean in terms of people who work for the State Department, writing articles, the Defense Department, the Department of Energy, all of the various other agencies? You would have to multiply it by a factor that would mean that the government would have to have a bureaucratic process for reviewing and censoring -- and it is censorship because, although you say it's not addressing substance,the government decides something is classified information and cannot be published.

GREANEY: But they have to determine within the guidelines of the executive order to meet the test for classification. And you, from experience, are well aware of what it takes to prove in a court something is classified. It is not easy. And I think experience has demonstrated that the more that this -- the longer this period has -- this publication has gone on, the better the testing has been to come up with hard classification items when they ask for a deletion. I don't think it's been abused in any way by the agency.

ADLER: Well, I think we would disagree with you on that because -- to give you the example you mentioned, the Marchetti case. From the time that thebook was submitted to the time that the final order, when they'd gone through the district court and the court of appeals, that took over two years. In the interim period, in between the district court decision and the court of appeals, that book was published because both the authors and the publishers did not want to wait any longer. So they accepted some 168 deletions from the book.

Now, in the subsequent period, we have litigated under the Freedom of Information Act to try to have many of those deletions declassified and released. And they have been, very many of them have been. And when you see what it was, in fact, that the government represented would cause harm to national security from disclosure, it's fairly incredible that they would

actually be able to represent to a court, let alone to the American public, that these things require absolute secrecy.

GREANEY: Now, wait a minute. I'm sorry. But I will tell you that the evidence that went into the court, Judge Bryan's court, to support the deletions in the Marchetti case...

HOSTESS: Mr. Greaney, I hate to do this, but thank you so much for being with us. We are running out of time.